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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Hawaii Medical Service Association

Serial No. 76/199,156

Robert Carson Godbey and Chad M. Iida of Godbey Griffiths
Reiss for Hawaii Medical Service Association.

Tricia McDermott Thompkins, Trademark Examining Attorney,
Law Office 114 (K. Margaret Lee, Managing Attorney).

Before Hairston, Walters and Drost, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Hawaii Medical
Service Association to register the mark CARDIAC CARE
CONNECTION for "providing cardiac information and an
illness management program aimed at reducing the long term
health effects and costs of cardiac problems through direct
patient and physician contact."¹

¹ Serial No. 76/199,156, filed January 22, 2001, and asserting a
bona fide intention to use the mark in commerce.

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C §1052(d), on the ground that applicant's mark, when applied to its services, so resembles the mark CARDIAC CONNECTION, which is registered for "educational services, namely, conducting seminars, forums, screenings and health fairs in the field of cardiology;" and "medical services,"² as to be likely to cause confusion, mistake or deception.

Applicant and the Examining Attorney have filed briefs; an oral hearing was not requested.

Before turning to the issue of likelihood of confusion, we must discuss an evidentiary matter. With its appeal brief, applicant has submitted three exhibits. Exhibit A consists of printouts taken from applicant's home page; Exhibit B is a list of proceedings in various federal courts which involve parties whose names include the word "Connection" taken from a private company's database; and Exhibit C is a list of third-party registrations of marks that include the word "CONNECTION" taken from the Office's Trademark Electronic Search System (TESS). The Examining Attorney has objected to this evidence as being untimely. We agree. Trademark Rule 2.142(d) provides that the record in the application should be complete prior to the filing

² Registration No. 2,103,803 issued October October 7, 1997.

of an appeal. The Trademark Trial and Appeal Board will ordinarily not consider additional evidence filed with the Board by the applicant after the appeal is filed. After an appeal is filed, if the applicant desires to introduce additional evidence, the applicant may request the Board to suspend the appeal and to remand the application for further examination. Because applicant first submitted this evidence with its appeal brief, it is untimely. Applicant's request, in its reply brief, that the Board take judicial notice of this evidence is denied. The Board does not take judicial notice of Internet printouts, lists of third-party registrations or lists of court proceedings from a private company's database. See TBMP §712.01 and cases cited therein.

In view of the foregoing, we have not considered the evidence in reaching our decision herein.

This brings us to the issue of likelihood of confusion. In determining whether there is a likelihood of confusion between two marks, we must consider all relevant factors as set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis under Section 2(d), two of the most important considerations are the similarities or dissimilarities between the marks and the similarities or

dissimilarities between the services. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Applicant argues that the services are different because registrant's services are informational in nature and are aimed at a general audience whereas "[applicant's] services are [designed] to diagnose and treat specific cardiology problems unique to a particular patient." (Brief, p. 12).

The question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration. See *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997); and *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987).

Further, it is a general rule that goods and/or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that the goods and/or services are related in some manner that would give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of the goods

and/or services. In re Melville Corp., 18 USPQ2d 1386 (TTAB 1991), and cases cited therein.

Registrant's services are identified as "educational services, namely, conducting seminars, forums, screenings and health fairs in the field of cardiology" and "medical services." Applicant's services are identified as "providing cardiac information and an illness management program aimed at reducing the long term health effects and costs of cardiac problems through direct patient and physician contact."

We agree with the Examining Attorney that, based on the recitations of services, registrant's medical services and educational services in the field of cardiology are identical and otherwise closely related to applicant's services of providing cardiac information and an illness management program for persons with cardiac problems. Because registrant's recitation of services contains no limitations we must presume that it encompasses all types of medical services, including an illness management program for persons with cardiac problems. Thus, applicant's and registrant's services in this regard are legally identical. Further, registrant's educational services in the field of cardiology and applicant's services of providing cardiac information are closely

related in that both involve teaching or advising persons about cardiac problems. Although we recognize that applicant's services will be directed to specific patients, a patient of applicant could nonetheless avail him or herself of registrant's educational services. In sum, the class of purchasers of applicant's and registrant's involved services would be the same.

We turn next to a consideration of the marks at issue. Applicant asks us to give little weight to the fact that both marks involved herein include the words CARDIAC and CONNECTION, and to focus on the additional word CARE in its mark to reach a conclusion that the marks are not likely to cause confusion. In addition, applicant asserts that registrant's mark CARDIAC CONNECTION is weak and entitled to only a limited scope of protection.

Because both of the involved marks include the words CARDIAC and CONNECTION in that order, there are significant similarities in sound, appearance, connotation and thus overall commercial impression. Applicant's mere addition of the word CARE does not serve to distinguish the marks so as to avoid a likelihood of confusion. Although there may be subtle differences in the meanings of the marks when they are subjected to a close analysis, we do not believe that purchasers will undertake such an analysis.

The test for likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Even if we were to assume that purchasers did note the slight difference in the marks because of the word CARE in applicant's mark, in view of the strong similarities stemming from the identical words CARDIAC and CONNECTION, and in view of the fact that the marks are used on identical and closely related services, purchasers are likely to believe that they are variants of each other and that they identify services emanating from the same source.

With regard to applicant's contention that registrant's mark is weak and entitled to a limited scope of protection, there is no evidence before us to support this contention. Nonetheless, we recognize that registrant's mark CARDIAC CONNECTION is somewhat suggestive of registrant's services. This fact, however, does not

help distinguish CARDIAC CONNECTION and CARDIAC CARE CONNECTION because the marks convey the same suggestive significance, that of a link to cardiac-related services.

Finally, applicant argues that the purchasers of its services and registrant's services are discriminating consumers in this regard, and that therefore they would not be confused just because these marks share the same two words. Even if prospective customers were discriminating purchasers, these marks, considered in their entirety, are similar enough to lead purchasers of the involved services to assume, erroneously, that the same entity provides, is responsible for, or in some way sponsors, the services rendered under both marks. This is especially so because these kinds of services are frequently sought at the recommendations of doctors or friends who may make oral reference to the mark under which the services are provided. Under such circumstances, a less than perfect recollection of the registered mark is more likely, and the likelihood of confusion based on the aforementioned similarities is thereby increased.

We conclude that persons familiar with the registered mark CARDIAC CONNECTION for educational services in the field of cardiology and medical services would be likely to believe, upon encountering the substantially similar mark

CARDIAC CARE CONNECTION for the services of providing cardiac information and an illness management program for persons with cardiac problems, that such services emanate from or are associated with the same source.

Decision: The refusal to register under Section 2(d) is affirmed.